

ASSEMBLY BILL

No. 295

Introduced by Assembly Member Steinberg

February 6, 2003

An act to amend Sections 17400 and 17432 of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

AB 295, as introduced, Steinberg. Child support.

Existing law requires that the amount of child support sought in any action for the payment of support be based upon the income or income history of the obligor, or, if unknown, a presumed income, as specified. Existing law requires the Judicial Council to provide notice of this determination on the complaint form.

This bill would revise the definition of presumed income to mean income based upon a minimum wage scale, as specified, and require the complaint form to reflect this revision.

Existing law permits the court to set aside judgments or orders for support that were based upon presumed income if actual income was substantially different from presumed income by 20% or more, as specified. Existing law provides an obligor 90 days after the first collection of support to file a motion for relief.

This bill would instead permit the court to set aside a judgment or order if the difference between actual and presumed income is 5% or more. The bill would provide an obligor one year to file a motion for relief. The bill would also make nonsubstantive, technical changes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 17400 of the Family Code is amended to read:

17400. (a) Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, when appropriate, enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) Notwithstanding Sections 25203 and 26529 of the Government Code, attorneys employed within the local child support agency may direct, control, and prosecute civil actions and proceedings in the name of the county in support of child support activities of the Department of Child Support Services and the local child support agency.

(c) Actions brought by the local child support agency to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The local child support agency's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(d) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop

1 simplified summons, complaint, and answer forms for any action
2 for support brought pursuant to this section or Section 17404. The
3 Judicial Council may combine the summons and complaint in a
4 single form.

5 (2) The simplified complaint form shall provide notice of the
6 amount of child support that is sought pursuant to the guidelines
7 set forth in Article 2 (commencing with Section 4050) of Chapter
8 2 of Part 2 of Division 9 based upon the income or income history
9 of the support obligor as known to the local child support agency.
10 If the support obligor's income or income history is unknown to
11 the local child support agency, the complaint shall inform the
12 support obligor that income shall be presumed ~~in an amount that~~
13 ~~results in a court order equal to the minimum basic standard of~~
14 ~~adequate care for Region I provided in Sections 11452 and~~
15 ~~11452.018 of the Welfare and Institutions Code~~ *to be the amount*
16 *of the minimum wage established by the Industrial Welfare*
17 *Commission pursuant to Section 1182.11 of the Labor Code at 40*
18 *hours per week*, unless information concerning the support
19 obligor's income is provided to the court. The complaint form
20 shall be accompanied by a proposed judgment. The complaint
21 form shall include a notice to the support obligor that the proposed
22 judgment will become effective if he or she fails to file an answer
23 with the court within 30 days of service. Except as provided in
24 paragraph (2) of subdivision (a) of Section 17402, if the proposed
25 judgment is entered by the court, the support order in the proposed
26 judgment shall be effective as of the first day of the month
27 following the filing of the complaint.

28 (3) (A) The simplified answer form shall be written in simple
29 English and shall permit a defendant to answer and raise defenses
30 by checking applicable boxes. The answer form shall include
31 instructions for completion of the form and instructions for proper
32 filing of the answer.

33 (B) The answer form shall be accompanied by a blank income
34 and expense declaration or simplified financial statement and
35 instructions on how to complete the financial forms. The answer
36 form shall direct the defendant to file the completed income and
37 expense declaration or simplified financial statement with the
38 answer, but shall state that the answer will be accepted by a court
39 without the income and expense declaration or simplified financial
40 statement.

1 (C) The clerk of the court shall accept and file answers, income
2 and expense declarations, and simplified financial statements that
3 are completed by hand provided they are legible.

4 (4) (A) The simplified complaint form prepared pursuant to
5 this subdivision shall be used by the local child support agency or
6 the Attorney General in all cases brought under this section or
7 Section 17404.

8 (B) The simplified answer form prepared pursuant to this
9 subdivision shall be served on all defendants with the simplified
10 complaint. Failure to serve the simplified answer form on all
11 defendants shall not invalidate any judgment obtained. However,
12 failure to serve the answer form may be used as evidence in any
13 proceeding under Section 17432 ~~of this code~~ or Section 473 of the
14 Code of Civil Procedure.

15 (C) The Judicial Council shall add language to the
16 governmental summons, for use by the local child support agency
17 with the governmental complaint to establish parental relationship
18 and child support, informing defendants that a blank answer form
19 should have been received with the summons and additional
20 copies may be obtained from either the local child support agency
21 or the superior court clerk.

22 (e) In any action brought or enforcement proceedings instituted
23 by the local child support agency pursuant to this section for
24 payment of child or spousal support, an action to recover an
25 arrearage in support payments may be maintained by the local
26 child support agency at any time within the period otherwise
27 specified for the enforcement of a support judgment,
28 notwithstanding the fact that the child has attained the age of
29 majority.

30 (f) The county shall undertake an outreach program to inform
31 the public that the services described in subdivisions (a) to (c),
32 inclusive, are available to persons not receiving public assistance.
33 There shall be prominently displayed in every public area of every
34 office of the agencies established by this section a notice, in clear
35 and simple language prescribed by the Director of Child Support
36 Services, that the services provided in subdivisions (a) to (c),
37 inclusive, are provided to all individuals, whether or not they are
38 recipients of public assistance.

39 (g) (1) In any action to establish a child support order brought
40 by the local child support agency in the performance of duties

under this section, the local child support agency may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order ~~shall have~~ *has* the same force and effect as a like or similar order under this code.

(2) The local child support agency shall file a motion for an order for temporary support within the following time limits:

(A) If the defendant is the mother, a presumed father under Section 7611, or any father where the child is at least six months old when the defendant files his or her answer, the time limit is 90 days after the defendant files an answer.

(B) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

(3) If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

(4) If the local child support agency fails to file a motion for an order for temporary support within time limits specified in this section, the local child support agency shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no motion is filed, when a final judgment is entered.

(5) Except as provided in Section 17304, nothing in this section prohibits the local child support agency from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the Department of Child Support Services.

(6) Nothing in this section ~~shall~~ otherwise ~~limit~~ *limits* the ability of the local child support agency from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

(h) As used in this article, “enforcing obligations” includes, but is not limited to, ~~(1) the~~ *any of the following*:

1 (1) *The* use of all interception and notification systems
2 operated by the department for the purposes of aiding in the
3 enforcement of support obligations, ~~(2) the~~.

4 (2) *The* obtaining by the local child support agency of an initial
5 order for child support that may include medical support or that is
6 for medical support only, by civil or criminal process, ~~(3) the~~.

7 (3) *The* initiation of a motion or order to show cause to increase
8 an existing child support order, and the response to a motion or
9 order to show cause brought by an obligor parent to decrease an
10 existing child support order, or the initiation of a motion or order
11 to show cause to obtain an order for medical support, and the
12 response to a motion or order to show cause brought by an obligor
13 parent to decrease or terminate an existing medical support order,
14 without regard to whether the child is receiving public assistance,
15 ~~(4) the~~.

16 (4) *The* response to a notice of motion or order to show cause
17 brought by an obligor parent to decrease an existing spousal
18 support order when the child or children are residing with the
19 obligee parent and the local child support agency is also enforcing
20 a related child support obligation owed to the obligee parent by the
21 same obligor, ~~and (5) the~~.

22 (5) *The* transfer of child support delinquencies to the Franchise
23 Tax Board under subdivision (c) of Section 17500 in support of the
24 local child support agency.

25 (i) As used in this section, “out of wedlock” means that the
26 biological parents of the child were not married to each other at the
27 time of the child’s conception.

28 (j) (1) The local child support agency is the public agency
29 responsible for administering wage withholding for current
30 support for the purposes of Title IV-D of the Social Security Act
31 (42 U.S.C. Sec. 651 et seq.).

32 (2) Nothing in this section ~~shall limit~~ *limits* the authority of the
33 local child support agency granted by other sections of this code
34 or otherwise granted by law, except to the extent that the law is
35 inconsistent with the transfer of delinquent child support to the
36 Franchise Tax Board.

37 (k) In the exercise of the authority granted under this article, the
38 local child support agency may intervene, pursuant to subdivision
39 (b) of Section 387 of the Code of Civil Procedure, by ex parte
40 application, in any action under this code, or other proceeding in

1 which child support is an issue or a reduction in spousal support
2 is sought. By notice of motion, order to show cause, or responsive
3 pleading served upon all parties to the action, the local child
4 support agency may request any relief that is appropriate that the
5 local child support agency is authorized to seek.

6 (l) The local child support agency shall comply with all
7 regulations and directives established by the department that set
8 time standards for responding to requests for assistance in locating
9 noncustodial parents, establishing paternity, establishing child
10 support awards, and collecting child support payments.

11 (m) As used in this article, medical support activities that the
12 local child support agency is authorized to perform are limited to
13 the following:

14 (1) The obtaining and enforcing of court orders for health
15 insurance coverage.

16 (2) Any other medical support activity mandated by federal law
17 or regulation.

18 (n) (1) Notwithstanding any other law, venue for an action or
19 proceeding under this division shall be determined as follows:

20 (A) Venue shall be in the superior court in the county that is
21 currently expending public assistance.

22 (B) If public assistance is not currently being expended, venue
23 shall be in the superior court in the county where the child who is
24 entitled to current support resides or is domiciled.

25 (C) If current support is no longer payable through, or
26 enforceable by, the local child support agency, venue shall be in the
27 superior court in the county that last provided public assistance for
28 actions to enforce arrearages assigned pursuant to Section 11477
29 of the Welfare and Institutions Code.

30 (D) If subparagraphs (A), (B), and (C) do not apply, venue shall
31 be in the superior court in the county of residence of the support
32 obligee.

33 (E) If the support obligee does not reside in California, and
34 subparagraphs (A), (B), (C), and (D) do not apply, venue shall be
35 in the superior court of the county of residence of the obligor.

36 (2) Notwithstanding paragraph (1), if the child becomes a
37 resident of another county after an action under this part has been
38 filed, venue may remain in the county where the action was filed
39 until the action is completed.

(o) The local child support agency of one county may appear on behalf of the local child support agency of any other county in an action or proceeding under this part.

SEC. 2. Section 17432 of the Family Code is amended to read:

17432. (a) In any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, the court may, on any terms that may be just, relieve the defendant from that part of the judgment or order concerning the amount of child support to be paid. This relief may be granted after the six-month time limit of Section 473 of the Code of Civil Procedure has elapsed, based on the grounds, and within the time limits, specified in this section.

(b) This section shall apply only to judgments or orders for support that were based upon presumed income as specified in subdivision (d) of Section 17400 and that were entered after the entry of the default of the defendant under Section 17430. This section shall apply only to the amount of support ordered and not that portion of the judgment or order concerning the determination of parentage.

(c) The court may set aside the child support order contained in a judgment described in subdivision (b) if the defendant's income was substantially different for the period of time during which judgment was effective compared with the income the defendant was presumed to have. A "substantial difference" means that amount of income that would result in an order for support that deviates from the order entered by default by 20 percent or more. ~~If the difference between the defendant's actual income and the presumed income would result in an order for support that deviates from the order entered by default by less than 20 percent, the court may set aside the child support order only if the court states, in writing or on the record, that the defendant is experiencing an extreme financial hardship due to the circumstances enumerated in Section 4071 and that a set aside of the default judgment is necessary to accommodate those circumstances.~~

(d) Application for relief under this section shall be accompanied by a copy of the answer or other pleading proposed to be filed together with an income and expense declaration or simplified financial statement and tax returns for any relevant years. The Judicial Council may combine the application for relief under this section and the proposed answer into a single form.

1 (e) The burden of proving that the actual income of the
2 defendant deviated substantially from the presumed income shall
3 be on the ~~defendant~~ *party seeking the order to set aside*.

4 (f) A motion for relief under this section shall be filed within
5 ~~90 days~~ *one year* of the first collection of money by the local child
6 support agency or the obligee. The ~~90-day~~ *one-year* time period
7 shall run from the date that the local child support agency receives
8 the first collection or from the date that the defendant is served
9 with notice of the collection, whichever date occurs first. If service
10 of the notice is by mail, the date of service shall be as specified in
11 Section 1013 of the Code of Civil Procedure.

12 (g) In all proceedings under this section, before granting relief,
13 the court shall consider the amount of time that has passed since
14 the entry of the order, the circumstances surrounding the
15 defendant's default, the relative hardship on the child or children
16 to whom the duty of support is owed, the caretaker parent, and the
17 defendant, and other equitable factors that the court deems
18 appropriate.

19 (h) If the court grants the relief requested, the court shall issue
20 a new child support order using the appropriate child support
21 guidelines currently in effect. The new order shall have the same
22 commencement date as the order set aside.

